

Before the
Federal Communications Commission
 Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	MM Docket No 03-132
)	RM-10709
Amendment of Section 73.202(b))	
(Table of Allotments))	
FM Broadcast Stations)	
)	
Springfield, Tennessee, and)	
Oak Grove and Trenton, Kentucky ¹)	

To: Assistant Chief, Media Bureau
 (Allocations)

REQUEST TO WITHDRAW UNCONTESTED
COUNTERPROPOSAL
AND REINSTATE ORIGINAL PROPOSAL

Saga Communications of Tuckessec, LLC ("Saga"), by its attorneys, and pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully requests to withdraw its **uncontested** Counterproposal filed July 28, 2003, in response to the Commission's Notice of Proposed Rule Making ("NPRM") in this Docket (DA 03-1989, released June 6, 2003).² That NPRM proposed to modify the Table of Allotments (47 C F R §73.202 (b)) to change the allotment of FM Channel 232A from Springfield, Tennessee, to Oak Grove, Kentucky, with a concurrent modification of the license of WJOL-FM, Springfield, Tennessee, to operate on Channel 232A at Oak Grove, Kentucky. Due to unforeseen circumstances; the adoption of radically restrictive new multiple ownership rules ("New Rules") and the impending deadline for

¹ Trenton, Kentucky, has been added to the caption

² The only documents found in this docket are Saga's petition for rule making, the NPRM, and Saga's Comments and Counterproposal. Saga's counsel has received no opposition pleadings in this case

ALL DOCUMENTS FILED 044
 IN THE DOCKET

the filing of comments and counterproposals in this docket, Saga found it necessary to counterpropose the reallocation of Channel 232A from Springfield, Tennessee, to Trenton, Kentucky, instead of Oak Grove Kentucky, as originally proposed. In light of action by the U S Court of Appeals for the Third Circuit³, that stayed the effective date of the New Rules, Saga requests the reinstatement of its original proposal for Oak Gove.⁴ In support whereof, the following is shown

Background
And
Basis for Extraordinary Request

1. Saga realizes that this is a most extraordinary request; however, unforeseen circumstances have forced Saga to take this action. WJOI-FM, Channel 232A, Springfield, Tennessee, is licensed to Saga. In its Petition for Rule Making, Saga requested the Commission to delete Channel 232A from Springfield and to reallocate it to Oak Grove, Kentucky, with a concurrent modification of the license of WJOI-FM to operate on Channel 232A at Oak Grove. This change is permissible under Section 1.420(i) of the Rules, which authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's present allotment. In addition to WJOI-FM, Saga is licensee of the following stations:

Call Sign	Location	Facility Identifier
In Arbitron Radio Market:		
WJMR(AM)	Fort Campbell, KY	61260
WCVQ(FM)	Fort Campbell, KY	61253

³ *Prometheus Radio Project v. FCC*, No. 03-3388 (3d Circuit, Sept. 3, 2003)

⁴ Saga is filing simultaneously a Motion for Leave to Accept this pleading.

WZZP(FM)	Hopkinsville, KY	83979
WVVR(FM)	Hopkinsville, KY	73970
WJQI(AM)	Clarksville, TN	65202
Not in Arbitron Radio Market		
WJQY(AM)	Springfield, TN	15960

2. In the Telecommunications Act of 1996, Congress directed the Commission to revise the limits on the number of commercial radio stations in a service (AM or FM) that a party may own in a local market. The Commission created four tiers limiting the magnitude of permissible station ownership governed by the number of stations in the relevant radio market. As a result, Section 73.3555(a)(2) of the Rules provides that in a radio market with more than 45 commercial radio stations (the top tier), a party may own, operate or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM). In a radio market with 14 or fewer commercial radio stations (the lowest tier), a party may own, operate or control up to 5 commercial radio stations, not more than 3 of which are in the same service, except that a party may not own, operate or control more than 50 percent of the stations in such a market. The Technical Statement attached to Saga's Counterproposal as Attachment A showed that under the existing multiple ownership rules, there are 68 commercial radio stations in the relevant radio market. Using the existing "contour-overlap" method, Saga could own Stations WJMR(AM), WCVQ(FM), WZZP(FM), WVVR(FM), WJQI(AM) and WJOI-FM even though there would be common city-grade contour overlap of four FM stations. In fact, Saga could own up to 8 commercial radio stations, with 5 in one service (AM or FM) because the stations would be located in a radio market with more than 45 commercial stations. However, on July 2, 2003, the Commission adopted revised multiple ownership rules in *2002 Biennial Review – Review of the*

Commission's Broadcast Ownership Rule et al, FCC 03-127 ("New Rules"). Under the New Rules, which depend on an analysis of Arbitron Radio markets to define the relevant radio market, there are only twelve (12) stations in the Clarksville TN-KY Arbitron Metro. **Therefore, using the definition set out in the New Rules, the relevant radio market would drop from a "top-tier" market with greater than 45 stations to a "first-tier" market with 14 or fewer stations, where one owner may have no more than five stations, three of which can be in one service (AM or FM).**

3 Since Oak Grove, Kentucky, is within Christian County, Kentucky, if the New Rules went into effect unmodified from their current form, Saga could not own WJOI-FM if it were licensed to that community. However, in its Counterproposal, Saga showed that if WJOI-FM were licensed to Trenton, Kentucky, which is located in Todd County, outside the Arbitron Metro, the combination would comply with the New Rules. Therefore, on July 28, 2003, Saga was forced to reluctantly file a counterproposal to allot Channel 232A to Trenton. No opposing or other comments were filed in this docket, so Saga's proposal is unopposed. In its Counterproposal, Saga stated at footnote 7, that if future events should permit the ownership by Saga of WJOI-FM as an Oak Grove station, Saga reserved the right to seek, at the appropriate time, authority from the Commission to serve Oak Grove. That time has now come.

Changed Circumstances
Now Permit Saga to Own WJOI-FM as an Oak Grove, KY, Station

4. In *Prometheus Radio Project v. FCC*, *supra*, the Third Circuit Court of Appeals granted a motion for stay of the effective date of the New Rules. By *Public Notice*, DA 03-2867, released September 10, 2003, the Commission reinstated the use of former Forms 301, 314, and 315 which require a showing of compliance with the existing multiple ownership rules, effective

upon publication of the *Public Notice* in the *Federal Register*. That publication has now taken place, and the Commission is accepting applications filed on the old forms (See Public Notice, DA 03-2903, released September 17, 2003). As the former rules permit Saga to own WJOI-FM as an Oak Grove, KY, station (68 commercial radio stations in the radio market), Saga requests the Commission to reinstate its previous request to allot Channel 232A to Oak Grove, KY. Saga readopts and incorporates by reference herein the showings made in its Petition for Rule Making as to community status and independence of Oak Grove from the Clarksville TN-KY Urbanized Area.

5 Two factors must be demonstrated in order to change a station's city of license in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission has stated that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of license in determining whether an allotment proposal should be approved." See Modification of FM and TV Authorizations (New Community of License), 4 FCC Rcd 4870 [66 RR 2d 877] (1989). Saga's proposal is consistent with the rules and Commission policies; i.e., the channel changes are mutually exclusive, and as shown *infra*, the rule making will not deprive Springfield of its only local transmission service. The proposal will result in bringing a first local service to Oak Grove, Kentucky. Due to the extraordinary sequence of events described herein, Saga now withdraws its expression of interest for Trenton, and restates that if the Commission allots Channel 232A to

Oak Grove, Saga will timely file an application for a minor change construction permit to operate WJOI-FM at Oak Grove, and upon grant, will promptly construct and operate the facilities.

6 In determining which proposal will better serve the public interest, the Commission is guided by the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service, (2) second full-time aural service; (3) first local service; and (4) other public interest matters [Co-equal weight is given to priorities (2) and (3).] Under priority three, first local service, Oak Grove warrants a preference over retaining WJOI-FM as a third local service to Springfield. Retaining WJOI-FM at Springfield would not trigger priority three because Springfield already has three stations. As set out in *Revision of FM Assignment Policies and Procedures, supra*, first local service to Oak Grove is greatly preferred to retaining three local services to Springfield. Thus, there would be a preferential arrangement of allotments resulting from the allotment of Channel 232A to Oak Grove.

Conclusion

7. Saga requests the Commission to allot Channel 232A to Oak Grove, Kentucky, and modify the license of WJOI-FM to operate on FM Channel 232A at Oak Grove. If the Commission so modifies the license of WJOI-FM, Saga will timely file an application for minor change construction permit to operate WJOI-FM at Oak Grove, and upon grant thereof, Saga will construct the new facilities and operate WJOI-FM at Oak Grove, Kentucky.

WHEREFORE, Saga respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

	<u>Present</u>	<u>Proposed</u>
		Tennessee
Springfield	232A	----- ⁵
		Kentucky
Oak Grove	NONE	232A

Respectfully submitted,

**SAGA COMMUNICATIONS OF
TUCKESSEE, LLC**

By



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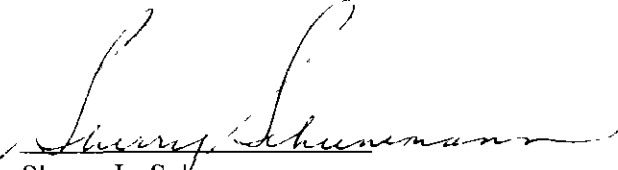
September 25, 2003

⁵ WJQY(AM) and WSGI(AM) are to remain licensed to Springfield.

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P C , do hereby certify that a copy of the foregoing "Request to Withdraw Uncontested Counterproposal and Reinstate Original Proposal", was hand delivered this 25th day of September, 2003 to the following

Rolanda F. Smith
Federal Communications Commission
The Portals
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Washington, D.C. 20554


Sherry L. Schunemann